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Office of the Attorney General

Washington, D. C. 20530

August 24, 1978

DOJ REVIEW COMPLETED

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78-3296/3

OGC HAS REVIEWED

Admiral Stansfield Turner
 Director
 Central Intelligence Agency
 Washington, D.C. 20505

DD/A Registry

File *Security*Re: United States v. William Peter Kampiles

Dear Stan:

I have your letter of August 19, 1978, regarding the Kampiles case. I assure you that we all appreciate the significance of the compromise of the manual. We will, of course, do what we can to minimize any further exposure. In this regard my answers to your questions are as follows:

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(1) Attempting to proceed on only a portion of the document would not eliminate the problems of exposure pretrial or at trial. I agree that the two passes constitute separate offenses and that an indictment could be drawn stating as an alleged offense only those pages in the first pass. However, during pretrial discovery, under Rule 16(C), Fed. R. Crim. P., Kampiles would be entitled to discover, upon request, the entire manual on the ground that, although not charged with passage of the latter sections, he requires those sections because they "are material to the preparation of his defense." We would, of course, seek a protective order limiting access to the manual. At trial, even though formally charging only the first few pages, the Government may be required to introduce the entire document. This in fact occurred in United States v. Dedeyan (D. Md. 1975). There, the Government alleged the passage of only seventy pages of a 130 page "Secret" document and the court, rejecting the Government's contentions that the remaining sixty

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Classified by Derivative - Ltr to the
 Attorney General from Director, CIA
 dated August 19, 1978
 Exempt from GDS, Category 2
 Date of Declassification - Indefinite

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pages were irrelevant to the charge, required the Government to produce the entire document both for discovery and at trial.

(2) It may not be possible to make deletions in the manual for purposes of pretrial discovery or use in evidence at trial. Because the entire manual is arguably material to the preparation of Kampiles' defense, a court will insist on its being produced in its entirety during pretrial discovery. At trial, the Government is usually not permitted to introduce documents into evidence with deletions unless agreed to by defense counsel. As you will recall, defense counsel in United States v. Moore (D. Md. 1977) did agree to certain deletions from documents and the documents were received in evidence in that form. Invariably, defense counsel will not agree to deletions because deletions create an inference in the minds of jurors of sensitivity of information greater than would result from actual exposure to the information itself.

(3) Usually, formal declassification is not required. As I am sure you are aware, Executive Order 11652 does not allow for limited declassification for purposes of prosecution. The validity of post-prosecution classification, however, has never been litigated. We will seek a post-trial sealing order from the court.

(4) It is possible, but far from certain, that the manual can be offered in evidence and yet kept from public view. Protective orders, secure handling in clerks' offices, and post-trial sealing have been successfully used in both Moore and United States v. Boyce and Lee (C.D. Calif. 1977) to protect classified documents. The availability of such procedures, however, and, in particular, post-trial sealing, depends on the court and, while we can safely say that virtually every court would grant protective orders and provide for secure handling, the likelihood that a given court will order post-trial sealing is less certain. For example, while that procedure was ordered in Moore and Boyce-Lee, the Government's requests for such orders were denied in Dedeyan and United States v. Humphrey and Truong (E.D. Va. 1978).

(5) Again, the scope of testimony required concerning the manual cannot be predicted with certainty. While the

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Government could undoubtedly limit testimony it elicits to a general description of the system, defense counsel would be entitled to cross-examine on the entire manual. It must be anticipated, therefore, that the scope and detail of the testimony required will encompass the entire manual but should not involve matters not contained in the manual or elicited during direct testimony.

(6) As we know from our experiences in recent cases, the defendant will be entitled to the manual on pretrial discovery. In those cases the court has issued a protective order providing for secure storage of the classified materials, limitations on the persons to whom such materials may be shown, the maintenance of a record of persons to whom the materials are shown and the times when shown, and the sanction of contempt for any person having access to the material who violates the terms of the protective order. In addition to the manual, you may expect that pretrial discovery will include Kampiles' personnel and security files and any other materials which fall within the terms of Rule 16, Fed. R. Crim. P.; the Jencks Act, 18 U.S.C. § 3500; or Brady v. Maryland, 373 U.S. 83 (1963). If any materials in those categories require special treatment, the Government will seek protective orders covering their handling.

(7) Kampiles' confession is, of course, critical to the Government's case and you correctly state that a confession standing alone is insufficient to convict. You are incorrectly advised, however, that the criminal acts must be established independent of his confession. Corroboration of the confession is required, but "the corroborative evidence need not be sufficient, independent of the statements, to establish the corpus delicti." Opper v. United States, 348 U.S. 84, 93 (1954). The Government need only establish the trustworthiness of Kampiles' confession, which may be established here by, among other things, his CIA employment, access, the fact that the copy of the manual which Kampiles claimed he sold to the Soviets is missing from CIA files, airplane tickets establishing his travel to Greece, bank records establishing receipt of money by Kampiles, and descriptions of the Soviet Embassy in Athens and the DDI Operations Center corroborating descriptions given by Kampiles in his confession. Assuming the admissibility of the confession, therefore, and assuming the Agency extends the same degree of cooperation to the prosecution that it has extended in past cases, the chances

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of success are good. In this regard, you will recall that in each of three recent espionage prosecutions involving the CIA (Moore, Boyce-Lee, and Humphrey-Troung), the Department has obtained convictions despite the significant and unique problems which arose in each case.

(8) The only commitment required of the Agency in advance of indictment is that which has been required in every past case involving the CIA - full and complete cooperation in the prosecution. As Department attorneys have discussed with your counsel, the Department is proceeding on the assumption that the full text of the [] document can be used at trial, if it becomes necessary despite all the precautions which we will take. Of course we will entertain any showing you may wish to make of an overwhelming national security reason for doing otherwise. At this stage there are no decisions as such for the Agency to make; prosecutive judgments and decisions, as you are well aware, are solely the responsibility of this Department based, in cases such as this, in part on your advice and assistance.

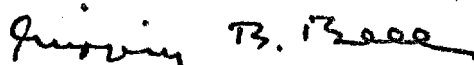
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With respect to the original source of information regarding this compromise of [] material, I fully appreciate the extraordinary sensitivity of the source. I assure you that the Department will do all in its power to protect the source.

The Department intends to present the case for indictment to a grand jury in Hammond in the Northern District of Indiana this Friday, August 25. I am well aware that the compromise of the manual and the prosecution of this case pose serious problems for your Agency. They are, however, problems which, as you know, have been overcome in the past and which can be overcome in this case. Given the harm Kampiles has done the CIA and this country, I am sure you will agree that Kampiles must be prosecuted to the full extent of the law and that we must do what can be done to accomplish this.

Yours sincerely,



Griffin B. Bell

cc: Honorable Zbigniew Brzezinski

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